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15 CV 1492

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



DEBORAH DONOGHUE,

Plaintiff,

- against -

NORTHWEST BIOTHERAPEUTICS,
INC.,

COMPLAINT FOR RECOVERY OF
SHORT-SWING PROFITS
UNDER 15 USC 78p(b)

Nominal Defendant,

-and -

COGNATE BIOSERVICES INC.,

Jury Trial Demanded

Defendant.

DEBORAH DONOGHUE, by David Lopez, Esq., her attorney,
complaining of the defendants, respectfully alleges the following upon information
and belief, except as to paragraph 2 which plaintiff alleges on personal knowledge.

JURISDICTION:

1. This action arises under the provisions of Section 16(b) of the
Securities Exchange Act of 1934, as amended (the "Act"), 15 U.S.C. Section 78p(b),

and jurisdiction is conferred upon this court by Section 27 of the Act, 15 U.S.C. Section 78aa.

THE PARTIES AND VENUE:

2. Plaintiff is a security owner of NORTHWEST BIOTHERAPEUTICS, INC. ("NORTHWEST"), a Delaware Corporation with principal offices at 4800 Montgomery Lane, Suite 800, Bethesda, Maryland 20814.

3. At all times relevant the common stock of NORTHWEST was registered under Section 12(b) of the Act and was and is traded on the NASDAQ Capital Market Exchange located within this district. One or more of the purchases or sales to be described took place upon such exchange.

4. This action is brought in the right and for the benefit of NORTHWEST which is named as a party defendant solely in order to have all necessary parties before the court.

5. At all times relevant COGNATE BIOSERVICES INC. ("COGNATE") was and is an insider of NORTHWEST, to wit: a more-than 10% beneficial owner of a class of equity security, both individually and as a conceded member of an ownership group under Section 13(d) of the Act, and thereby a fiduciary.

6. COGNATE maintains a principal place of business or is found at 7513 Connelley Drive, Hanover, Maryland 210

STATUTORY REQUISITES:

7. The violations of Section 16(b) of the Act to be described herein involve non-exempt securities in non-exempt transactions engaged in by non-exempt persons within the meaning of the Act.

8. Demand for prosecution was made on NORTHWEST on December 20, 2014.

9. By letter dated February 6, 2015, Mr. Leslie Goldman, Senior Vice President of NORTHWEST, acting on its behalf, stated that agreement had been reached with COGNATE for the payment by it to NORTHWEST of \$448,681 and that "The Company believes that ...the payment from COGNATE fully resolve[s] the matters raised by your letter".

10. More than sixty days have expired since the making of demand.

11. Further delay in the filing of suit would be a futile gesture.

12. This action is brought within two years of the occurrence of the violations to be described herein or within two years of the time when reports required by 15 U.S.C. 78p(a) setting forth the substance of the transactions here complained of were first filed with the Securities & Exchange Commission.

FIRST CLAIM FOR RELIEF:

13. COGNATE sold 233,344 shares of the common stock of NORTHWEST on January 31, 2014, an additional 233,344 such shares on February

4, 2014, an additional 132,540 such shares on February 7, 2014, an additional 79,630 such shares on February 8, 2014, an additional 133,333 such shares on March 7, 2014, an additional 120,370 such shares on March 7, 2014, an additional 145,068 such shares on August 27, 2014, and an additional 149,502 such shares on September 15, 2014.

14. COGNATE purchased many more shares of the common stock of NORTHWEST than it sold within six months of the sales aforesaid including the purchase of more than 3,000,000 shares between March 1, 2014, and September 1, 2014.

15. The foregoing purchases and sales may be matched against one another using the "lowest-in, highest-out" method to produce profits recoverable from COGNATE. The amounts of such profits are unknown to Plaintiff but are estimated to approximate \$1,400,000, reduced by any payments heretofore actually made.

16. Such net profits are recoverable on behalf NORTHWEST by Plaintiff as a shareholder of NORTHWEST, the latter having purported to recover in its own right and for its own benefit a grossly lesser sum without justification.

SECOND CLAIM FOR RELIEF:

17. This Second Claim For Relief is a precaution against possible errors of detail attributable to inaccuracies in the public record or the discovery of additional trades during the course of this action.

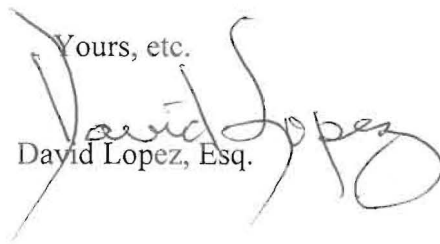
18. COGNATE, acting during periods not barred by the statute of limitations measured from the date of the filing of this complaint, purchased and sold or sold and purchased equity securities or equity security equivalents of NORTHWEST, including but not limited to those described in the FIRST CLAIM FOR RELIEF, within periods of less than six months of each other while an insider and thereby a fiduciary of NORTHWEST.

19. By reason of such purchases and sales or sales and purchases of its equity securities or equity security equivalents within periods of less than six months of one another while an insider and fiduciary of NORTHWEST, COGNATE realized profits, the exact amounts thereof being unknown to Plaintiff, which profits inure to the benefit, and are recoverable by plaintiff on behalf, of NORTHWEST.

WHEREFORE, Plaintiff demands judgment:

- a) Requiring COGNATE to account for and to pay over to NORTHWEST the short-swing profits realized and retained by it in violation of Section 16(b) of the Act, together with appropriate interest and the costs of this suit;
- b) Awarding to Plaintiff her costs and disbursements including reasonable attorney's, accountants and expert witness fees; and
- c) Granting to Plaintiff such other and further relief as the court may deem just and proper.

Dated: Southampton, New York
February 23, 2015

Yours, etc.

David Lopez, Esq.

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

FEB 26 2015

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PLAINTIFFS

DEFENDANTS

DEBORAH DONOGHUE

NORTHWEST BIOTHERAPEUTICS, INC. and COGNATE BIOSERVICES INC.

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

DAVID LOPEZ, ESQ., 171 EDGE OF WOODS ROAD, PO BOX 323
SOUTHAMPTON, NEW YORK 11968 // 631.287.5520

NOT KNOWN

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

SHAREHOLDER SUIT TO RECOVER SHORT-SWING PROFITS UNDER 15 USC 78p(b)

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? ☒ Yes ☐ No ☐ Judge Previously Assigned

If yes, was this case Vol. ☒ Invol. ☐ Dismissed. No ☐ Yes ☒ If yes, give date February 20, 2015 & Case No. 15 CV 730 (Failla, J.)

IS THIS AN INTERNATIONAL ARBITRATION CASE? No ☒ Yes ☐

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS		ACTIONS UNDER STATUTES			
CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 INSURANCE	<input type="checkbox"/> 310 AIRPLANE	<input type="checkbox"/> 367 HEALTHCARE/	<input type="checkbox"/> 625 DRUG RELATED	<input type="checkbox"/> 422 APPEAL	<input type="checkbox"/> 375 FALSE CLAIMS
<input type="checkbox"/> 120 MARINE	<input type="checkbox"/> 315 AIRPLANE PRODUCT	<input type="checkbox"/> INJURY/PRODUCT LIABILITY	<input type="checkbox"/> SEIZURE OF PROPERTY	<input type="checkbox"/> 28 USC 158	<input type="checkbox"/> 400 STATE
<input type="checkbox"/> 130 MILLER ACT	<input type="checkbox"/> LIABILITY	<input type="checkbox"/> 365 PERSONAL INJURY	<input type="checkbox"/> 21 USC 881	<input type="checkbox"/> 423 WITHDRAWAL	<input type="checkbox"/> REAPPORTIONMENT
<input type="checkbox"/> 140 NEGOTIABLE	<input type="checkbox"/> 320 ASSAULT, LIBEL &	<input type="checkbox"/> PRODUCT LIABILITY	<input type="checkbox"/> 690 OTHER	<input type="checkbox"/> 28 USC 157	<input type="checkbox"/> 410 ANTITRUST
<input type="checkbox"/> 150 RECOVERY OF	<input type="checkbox"/> SLANDER	<input type="checkbox"/> 368 ASBESTOS PERSONAL			<input type="checkbox"/> 430 BANKS & BANKING
	<input type="checkbox"/> 330 FEDERAL	<input type="checkbox"/> INJURY PRODUCT			<input type="checkbox"/> 450 COMMERCE
	EMPLOYERS' LIABILITY	<input type="checkbox"/> LIABILITY			<input type="checkbox"/> 460 DEPORTATION
<input type="checkbox"/> 151 RECOVERY OF	<input type="checkbox"/> 340 MARINE	PERSONAL PROPERTY		PROPERTY RIGHTS	<input type="checkbox"/> 470 RACKETEER INFLU-
<input type="checkbox"/> 152 MEDICARE ACT	<input type="checkbox"/> 345 MARINE PRODUCT	<input type="checkbox"/> 370 OTHER FRAUD		<input type="checkbox"/> 820 COPYRIGHTS	ENCED & CORRUPT
	LIABILITY	<input type="checkbox"/> 371 TRUTH IN LENDING		<input type="checkbox"/> 830 PATENT	ORGANIZATION ACT
	<input type="checkbox"/> 350 MOTOR VEHICLE			<input type="checkbox"/> 840 TRADEMARK	(RICO)
	<input type="checkbox"/> 355 MOTOR VEHICLE				<input type="checkbox"/> 480 CONSUMER CREDIT
	PRODUCT LIABILITY				<input type="checkbox"/> 490 CABLE/SATELLITE TV
<input type="checkbox"/> 153 RECOVERY OF	<input type="checkbox"/> 360 OTHER PERSONAL	<input type="checkbox"/> 380 OTHER PERSONAL	LABOR	SOCIAL SECURITY	<input checked="" type="checkbox"/> 850 SECURITIES/
	INJURY	<input type="checkbox"/> PROPERTY DAMAGE	<input type="checkbox"/> 710 FAIR LABOR	<input type="checkbox"/> 861 HIA (1395ff)	COMMODITIES/
	<input type="checkbox"/> 362 PERSONAL INJURY -	<input type="checkbox"/> 385 PROPERTY DAMAGE	<input type="checkbox"/> STANDARDS ACT	<input type="checkbox"/> 862 BLACK LUNG (923)	EXCHANGE
	MED MALPRACTICE	<input type="checkbox"/> PRODUCT LIABILITY	<input type="checkbox"/> 720 LABOR/MGMT	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	
<input type="checkbox"/> 160 STOCKHOLDERS		PRISONER PETITIONS	<input type="checkbox"/> RELATIONS	<input type="checkbox"/> 864 SSID TITLE XVI	<input type="checkbox"/> 890 OTHER STATUTORY
SUITS		<input type="checkbox"/> 463 ALIEN DETAINEE	<input type="checkbox"/> 740 RAILWAY LABOR ACT	<input type="checkbox"/> 865 RSI (405(g))	ACTIONS
<input type="checkbox"/> 190 OTHER	ACTIONS UNDER STATUTES	<input type="checkbox"/> 510 MOTIONS TO	<input type="checkbox"/> 751 FAMILY MEDICAL		<input type="checkbox"/> 891 AGRICULTURAL ACTS
CONTRACT	CIVIL RIGHTS	<input type="checkbox"/> VACATE SENTENCE	<input type="checkbox"/> LEAVE ACT (FMLA)	FEDERAL TAX SUITS	
<input type="checkbox"/> 195 CONTRACT	<input type="checkbox"/> 440 OTHER CIVIL RIGHTS	<input type="checkbox"/> 28 USC 2255	<input type="checkbox"/> 790 OTHER LABOR	<input type="checkbox"/> 870 TAXES (U.S. Plaintiff or	<input type="checkbox"/> 893 ENVIRONMENTAL
PRODUCT	(Non-Prisoner)	<input type="checkbox"/> 530 HABEAS CORPUS	LITIGATION	Defendant)	MATTERS
LIABILITY		<input type="checkbox"/> 535 DEATH PENALTY	<input type="checkbox"/> 791 EMPL RET INC	<input type="checkbox"/> 871 IRS-THIRD PARTY	<input type="checkbox"/> 895 FREEDOM OF
<input type="checkbox"/> 196 FRANCHISE	<input type="checkbox"/> 441 VOTING	<input type="checkbox"/> 540 MANDAMUS & OTHER	SECURITY ACT	<input type="checkbox"/> 26 USC 7609	INFORMATION ACT
	<input type="checkbox"/> 442 EMPLOYMENT	PRISONER CIVIL RIGHTS	IMMIGRATION		<input type="checkbox"/> 896 ARBITRATION
REAL PROPERTY	<input type="checkbox"/> 443 HOUSING/	<input type="checkbox"/> 550 CIVIL RIGHTS	<input type="checkbox"/> 462 NATURALIZATION		<input type="checkbox"/> 899 ADMINISTRATIVE
<input type="checkbox"/> 210 LAND	ACCOMMODATIONS	<input type="checkbox"/> 555 PRISON CONDITION	APPLICATION		PROCEDURE ACT/REVIEW OR
<input type="checkbox"/> 220 FORECLOSURE	<input type="checkbox"/> 445 AMERICANS WITH	<input type="checkbox"/> 560 CIVIL DETAINEE	<input type="checkbox"/> 465 OTHER IMMIGRATION		APPEAL OF AGENCY DECISION
<input type="checkbox"/> 230 RENT LEASE &	DISABILITIES -	<input type="checkbox"/> CONDITIONS OF CONFINEMENT	ACTIONS		<input type="checkbox"/> 950 CONSTITUTIONALITY OF
EJECTMENT	EMPLOYMENT				STATE STATUTES
<input type="checkbox"/> 240 TORTS TO LAND	<input type="checkbox"/> 446 AMERICANS WITH				
<input type="checkbox"/> 245 TORT PRODUCT	DISABILITIES -OTHER				
LIABILITY	<input type="checkbox"/> 448 EDUCATION				
<input type="checkbox"/> 290 ALL OTHER					
REAL PROPERTY					

Check if demanded in complaint:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ OTHER Account/Pay JUDGE N/A DOCKET NUMBER

Check YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ a. all parties represented ☐ b. At least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.

- ☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐ 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF [] 1	DEF [] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] 3 [] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] 5 [] 5
CITIZEN OF ANOTHER STATE	[] 2	[] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[] 4 [] 4	FOREIGN NATION	[] 6 [] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

DEBORAH DONOGHUE
75 CANTITOE ROAD
YONKERS, NEW YORK 10710

WESTCHESTER COUNTY

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

NORTHWEST BIOTHERAPEUTICS, INC.
4800 MONTGOMERY LANE, SUITE 800
BETHESDA, MARYLAND 20814

COGNATE BIOSERVICES INC.
7513 CONNELLEY DRIVE
HANOVER, MARYLAND 21076

MONTGOMERY COUNTY

MONTGOMERY COUNTY

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

N/A

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN
(DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE 02/23/2015 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT
[] NO

RECEIPT #

☒ YES (DATE ADMITTED Mo. '06 Yr. 1970)
Attorney Bar Code # DL-6779

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

Clear Form

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